

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 7-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Knowlton (U.S. Patent 6,350,276).

Regarding claims 1, 7 and 15, Knowlton discloses a method of treating a target tissue site, the method comprising: using an energy delivery device to apply a combination of electromagnetic energy treatments delivered to different tissue depths; identifying/selecting the tissue site based on a tissue profile or condition/deformity of the tissue site (col. 2, lines 19-46, col. 12, line 50-67, col. 13, 35-47 and col. 14, lines 19-54); delivering energy to the tissue site at a first depth to achieve a first tissue effect using an energy delivery device, wherein the first tissue effect is a two dimensional tightening of the skin surface (col. 2, line 20 through col. 3, line 28); delivering energy to the tissue site at a second depth to achieve a second tissue effect using an energy delivery device, wherein the second tissue effect is a three dimensional tissue repositioning or inward contouring (col. 2, line 20 through col. 3, line 28); and remodeling at least a portion of tissue at the tissue site (col. 2, lines 19-46, col. 8, lines 11-30 and claim 1). One energy deliver is radio frequency (RF a type of electromagnetic energy) which delivers energy to

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at least a first or second depth, see col. 6, lines 5-48 and col. 7, line 52 through col. 8, line 30 and col. 13, line 18 through col. 21, line 14, **and finally and in particular col. 15:25-60 wherein the combination of electromagnetic treatment effects is made explicit.**

Regarding claims 2 and 16, Knowlton further discloses the tissue site is selected based on an amount of convexity at the tissue site or an image of the tissue site, see col. 12, lines 1-3.

Regarding claims 3, 8, 17 and 18, Knowlton disclose the claimed invention, see col. 6, lines 5-48, col. 7 and 8.

Regarding claim 9, Knowlton further discloses delivering a pattern of energy applications to the tissue site using the energy delivery device; and producing a plurality of thermal adhesions or lesions wherein the plurality of adhesions or lesions is substantially continuous or at least partially overlapping, see col. 16, lines 54-67.

Regarding claim 10, Knowlton discloses delivering a vectored force to the tissue site, see col. 8, lines 11-30.

Regarding claim 11, Knowlton further discloses cooling a layer of tissue or a surface layer of tissue of at least a portion of the tissue site, see col. 4, line 55 through col. 5, line 15.

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Regarding claim 12, Knowlton further discloses producing a reverse thermal gradient within at least a portion of the tissue site, see col. 5, lines 52-59.

Regarding claim 13, Knowlton discloses producing a reverse thermal gradient within at least a portion of the tissue site, see col. 10, lines 1-3.

Regarding claim 14, Knowlton further disclose substantially preserving at least a portion of a surface, a tissue layer or an epidermal layer at or adjacent the tissue site, see entire disclosure, particularly col. 2, 8 and 14.

Regarding claim 19, Knowlton further disclose controlling at least one of dose or the depth of energy delivery responsive to the identified deformity, see col. 7, line 31-51.

Regarding claim 20, Knowlton further disclose the dose or depth or depth of energy delivery is controlled by at least one of the selection of electrode size, power, pre-cooling period, cooling period, or energy delivery time, see col. 7, line 31-51.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knowlton (USPN 6,350,276) (Knowlton I) as applied to claim 1 above, and further in view of Knowlton (USPN 6,377,854) (Knowlton II).

Regarding claim 5, Knowlton I discloses the claimed invention except for the contraction of fibrous septae. Knowlton II discloses a RF treatment device and teaches that the RF treatment device applies energy to soft tissue in order to “contract collagen in fibrous septae in subcutaneous fat layers underlying the skin surface so as to modify a structure of the underlying tissue such that soft tissues in the subcutaneous fat layers are tightened and fat is reduced in lipocytes in the subcutaneous fat layers,” see claim 1. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Knowlton I, as taught by Knowlton II, to “contract collagen in fibrous septae in subcutaneous fat layers underlying the skin surface so as to modify a structure of the underlying tissue such that soft tissues in the subcutaneous fat layers are tightened and fat is reduced in lipocytes in the subcutaneous fat layers.”

Response to Arguments

Applicant's arguments filed 10/09/2009 have been fully considered but they are not persuasive.

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First, Applicant's arguments/remarks on page 5, 4th full paragraph are noted. However, Knowlton I discloses both bipolar and monopolar RF in that passage. Applicant should appreciate that RF is an electromagnetic energy.

Second, regarding Applicant's arguments/remarks on page 5, last paragraph, Knowlton I clearly discloses two tissue effects at two different depths, see col. 15:25-60.

Third, regarding Applicant's arguments/remarks on page 6, 1st full paragraph, Knowlton I clearly discloses a method that applies a combination of electromagnetic energy treatments (surface tissue and tissue beneath) and 2) the combination of electromagnetic energy treatments are applied to a specific target tissue site. As far as Applicant's assertion that:

Knowlton I does not teach that the "combination of RF lipolysis at the active electrode with skin contraction at the passive electrode tissue interface 19" are the result of a combination of electromagnetic energy treatments and may in fact be the result of a single electromagnetic treatment manifesting different tissue effects at two completely different tissue sites as a result of the widely spaced electrodes.

This specific language does not appear in the claims and therefore this argument/remark is moot.

The Applicant is invited to request an interview to discuss suggestions to find an acceptable conclusion of the prosecution for all parties.

The rejections are maintained and this action is made FINAL.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 8:30AM-7PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aaron Roane/
Examiner, Art Unit 3769

/Henry M. Johnson, III/
Supervisory Patent Examiner, Art Unit
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